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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/804,592	03/19/2004	William Galbraith	P-6007/I	9558
26253 7590 11/25/2009 David W. Highet, VP & Chief IP Counsel Becton, Dickinson and Company 1 Becton Drive MC 110 Franklin Lakes, NJ 07417-1880				
EXAMINER YU, MELANIE J				
ART UNIT		PAPER NUMBER		
1641				
MAIL DATE		DELIVERY MODE		
11/25/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action
Before the Filing of an Appeal Brief

Application No.

10/804,592

Applicant(s)

GALBRAITH, WILLIAM

Examiner

MELANIE YU

Art Unit

1641

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 11 November 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1, 5, 6 and 55.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☒ Other: _____.

/Melanie Yu/
Primary Examiner, Art Unit 1641

Continuation of 11, does NOT place the application in condition for allowance because: for the reasons stated in the previous office action dated 10 September 2009.

Applicant argues that Grahnen et al. do not use an epoxy linker to attach BSP to an insoluble support and instead rely on sodium borohydride for linking to the support, and Grahnen et al. is not directed to the use of multiple linkers for linking BSP to a support. Applicant further argues that Grahnen et al. disclose a specific methodology to achieve purification of porcine ligandin, which includes the preparation of BSP by using sodium borohydride rather than epoxy linkers. Applicant argues that at page 580, Grahnen et al. state that a poor correlation has been noted between the binding of BSP with certain protein, and this unpredictability discourages one from altering the preparation method of Grahnen et al.

Applicant's argument is not persuasive because although Grahnen et al. teach sodium borohydride to link BSP to a support, Grahnen et al. do not teach that sodium borohydride must be used and do not teach away from using other linkers to link BSP to the support.

In response to applicant's argument that Grahnen et al. dispose a specific methodology to achieve purification of porcine ligandin including preparation of BSP using sodium borohydride, applicant's argument is not persuasive because BSP is expected to have the same binding properties regardless of how it is linked to the support. Grahnen et al. do not teach that the sodium borohydride affect the binding properties of BSP in any way and is only the linking method selected by Grahnen et al. to link BSP to a support. The selection of sodium borohydride by Grahnen et al. does not indicate that this is the only linker compatible with the isolation method. Applicant fails to show that an epoxy linker is not capable of being used as the linker in the support of Grahnen et al. or would not be obvious based on the combination of references. The lack of teaching of an epoxy linker in the support of Grahnen et al. is not a persuasive argument that an epoxy linker is not compatible with the BSP and support of Grahnen et al.

In response to applicant's argument that at page 580 Grahnen et al. state that poor correlation is noted between the binding of BSP with certain proteins and this unpredictability discourages one from altering the preparation method, this argument is not persuasive because the poor correlation stated by Grahnen et al. is based on the proteins that BSP binds to, not the unpredictability of the linker or preparation of binding BSP to the support. This passage is drawn to the binding of BSP to other types of proteins besides ligandin, and does not teach away from altering the preparation method. The references of Grahnen et al. in combination with Spring et al. and Degen et al. teach that it would have been obvious to use an epoxy to attach BSP to the support.

Additionally, applicant argues against the references individually, by only arguing against the teachings of Grahnen et al., and one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).